

REMARKS:

In the Office Action dated May 30, 2008, claims 10, 11, 14 and 15, in the above-identified U.S. patent application were rejected and claims 6 and 7 were objected to. Reconsideration of the rejections is respectfully requested in view of the above amendments and the following remarks. Claims 6, 7, 10, 11, 14 and 15 remain in this application, claims 1-5 have been canceled, new claims 16 and 17 added to the application, and claims 8, 9, 12 and 13 have been withdrawn.

Claims 14 and 15 were rejected under 35 USC §102(e) as anticipated by Celeste (USP 5,658,882) as evidenced by Yamashita. As previously pointed out, the present application has a foreign priority date of August 10, 1993 while Celeste has an effective filing date of March 25, 1994. Translations of all of the foreign priority documents were previously filed. Applicants point out page 10, second paragraph, of the priority document P 43 26 829.3 filed on August 10, 1993. This disclosure states "[A]nother possible clinical application of the TGF- β protein according to the invention is to use it as a suppressor of an immunoreaction to prevent rejection of organ transplants or its application in connection with angiogenesis". Applicants also point out that the definition of angiogenesis is well known in the art as meaning the formation of new blood vessels. In view of the disclosure in the priority document, applicants contend that claims 14 and 15 are supported by the disclosure in the priority document filed on August 10, 1993 and request that this rejection be withdrawn.

Claims 10, 11, 14 and 15 were rejected under 35 USC §112, first paragraph, as lacking an adequate written description regarding a method of treatment using SEQ ID NO:13. Applicants respectfully point out that the present application discloses that

functional parts of the described proteins can be used and defines such functional parts on page 5, wherein it is stated that the term "functional part" denotes a protein part which is capable of acting as a signal peptide, propeptide or as a mature protein part, i.e. it fulfills at least one of the biological functions of the natural protein parts of MP-52. The mature part of the natural protein has known properties and therefore is a functional part. However, in order to advance the prosecution of the present application and because the other parts of the claims also encompass SEQ ID NO:13, part (e) of claims 10 and 14 has been deleted. In view of the above discussion and amendments, applicants request that this rejection be withdrawn.

Claims 10, 11, 14 and 15 were rejected under 35 USC §112, second paragraph, as indefinite regarding the language "biologically functional parts". Claims 10 and 14 have been amended to indicate that the biologically functional parts have tissue inductive capabilities. This amendment is supported by the disclosure on page 8 of the present application which states that the "protein according to the invention preferably has the amino acid sequence shown in SEQ ID NO:2 or if desired functional parts thereof and exhibits biological properties such as tissue inductive in particular osteoinductive or/and mitogenic capabilities that may be relevant for a therapeutic application". In view of the above amendment and discussion, applicants contend that the biological function is clear and request that this rejection be withdrawn.

Claims 10, 11, 14 and 15 were rejected under 35 USC §102(b) as anticipated by Celeste (USP 5,658,882) as evidenced by Yamashita regarding a method of treatment using SEQ ID NO:13. As discussed above, the claims have been amended to delete

specific references to SEQ ID NO:13. In view of this amendment, applicants contend that the present claims are entitled to the benefit of the filing date of the priority documents and that Celeste and Yamashita are not available as prior art references. Thus, applicants request that this rejection be withdrawn.

Applicants respectfully submit that all of claims 6, 7, 10, 11 and 14-17 are now in condition for allowance. If it is believed that the application is not in condition for allowance, it is respectfully requested that the undersigned attorney be contacted at the telephone number below.

In the event this paper is not considered to be timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fee for such an extension together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account No. 02-2135.

Respectfully submitted,

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